

The respondent also raises an issue as to whether the claimant meets the definition of being temporarily and totally disabled.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. After reviewing the evidence and considering the arguments, the Appeals Board concludes the issues raised by the respondent are not reviewable at this stage of the proceedings. Therefore, this appeal should be dismissed.

2. This is an appeal from a preliminary hearing order. Therefore, not every error in law or fact is subject to review. Generally, preliminary hearing awards can be reviewed only when it is alleged the judge exceeded his or her jurisdiction in granting or denying benefits.¹ Preliminary hearing findings of whether (1) the worker sustained an accidental injury, (2) the injury arose out of and in the course of employment (3) notice was given or claim timely made, or (4) certain defenses apply, are deemed jurisdictional and subject to review from a preliminary hearing order.² The Appeals Board has held on numerous occasions that the term "certain defenses" refers to defenses which dispute the compensability of the claim under the Workers Compensation Act.

3. The issues raised in this appeal are not one of the jurisdictional issues listed above and the judge did not exceed her jurisdiction. The question presented by the respondent is whether the judge erred in applying the law to a preliminary hearing issue over which the judge had jurisdiction.

WHEREFORE, the Appeals Board dismisses this appeal leaving the June 21, 2002 Order in full force and effect.

IT IS SO ORDERED.

¹ K.S.A. 44-551(b)(2)(A).

² K.S.A. 44-534a.

Dated this _____ day of November 2002.

BOARD MEMBER

c: J. Scott Gordon, Attorney for Respondent
Michael L. Snider, Attorney for Claimant
Nelsonna Potts Barnes, Administrative Law Judge
Director, Division of Workers Compensation